

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 290, AFL-CIO and Sheet Metal Workers International Association, Local Union No. 16, AFL-CIO (Streimer Sheet Metal Works, Inc.) and Hoffman Construction of Oregon. Cases 36-CD-202 and 36-CD-203

June 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

The issue in this case¹ is whether the judge correctly dismissed a complaint alleging that the Respondent violated Section 8(b)(4)(D) by threatening to and engaging in picketing against Streimer Sheet Metal Works, Inc., with an object of forcing the reassignment of certain work from Streimer employees who are represented by Sheet Metal Workers Local Union No. 16 to employees who are represented by the Respondent. The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

¹ On February 7, 1997, Administrative Law Judge Timothy D. Nelson issued the attached decision. The General Counsel, Sheet Metal Workers Local Union No. 16, and Employers Streimer Sheet Metal Works, Inc. and Hoffman Construction of Oregon filed exceptions and supporting briefs. The Respondent filed an answering brief.

² The General Counsel, Sheet Metal Workers Local Union No. 16, and Employers Streimer and Hoffman have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ We agree with the judge that the General Counsel has failed to prove by a preponderance of the credited evidence in this unfair labor practice proceeding that the Respondent violated Sec. 8(b)(4)(D). In light of the Respondent's election, under *Longshoremen ILWU Local 6 (Golden Grain Macaroni Co.)*, 289 NLRB 1 (1988), to relitigate the unfair labor practice issue, we find no need to review the Board's decision reached under a different evidentiary standard in the Sec. 10(k) proceeding. See *Plumbers Local 290 (Streimer Sheet Metal Works)*, 319 NLRB 891 (1995). Therefore, we do not rely on the judge's comments about that decision. Members Fox and Higgins further note that they did not participate in the earlier Board decision.

Linda J. Scheldrup, Esq., for the General Counsel.

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Richard H. Robblee and Mark McCulley, Esqs. (Hafer, Price, Rinehart & Robblee), of Seattle, Washington, for the Respondent.

Norman Malbin, Esq., of Portland, Oregon, for Charging Party Sheet Metal Workers Local 16.

Richard N. Van Cleave, Esq. (Davis Wright Tremaine), of Portland, Oregon, for Charging Party Hoffman Construction.

DECISION

The Case in Brief; The Ultimate Question it Presents

TIMOTHY D. NELSON, Administrative Law Judge. On January 19, 1996, the Regional Director for Region 19 of the National Labor Relations Board issued a consolidated complaint and notice of hearing in the name of the Board's General Counsel against Plumbers Local Union No. 290 (Local 290).¹ I heard the case in trial in Portland, Oregon, on June 13, 1996, at which all parties were represented by attorneys and after which all parties filed briefs through their attorneys.²

The complaint alleges that Local 290 violated Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act³ when it threatened to picket and then picketed Streimer Sheet Metal Works (Streimer) on 6 days in late February-early March 1995 with signs protesting Streimer's failure to confer "area-standard" wages and benefits on its "plumbers and pipefitters." The complaint further alleges that this conduct, legally innocuous on its face, was nevertheless unlawful because it had as "an object" to force or require Streimer to reassign certain allegedly disputed work from its own workers to workers represented by Local 290. Local 290 substantially admits the picketing conduct, but denies that the picketing was done for any such work-reassignment purpose, and insists, rather, that the picketing was done solely for the lawful, area-standards purpose implicit in the legends on its picket signs.

The complaint and trial followed on the heels of the Board's decision in *Plumbers Local 290 (Streimer Sheet Metal Works)*, 319 NLRB 891 (1995), a decision in a proceeding initiated by these same charges, and held pursuant to Section 10(k) of the Act to resolve what the Board found to be a "jurisdictional dispute" involving these same parties

¹ Local 290's full name is actually, "United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local Union No. 290."

² On Local 290's unopposed request, the deadline for receipt of briefs was extended to close of business on July 26, 1996.

³ Sec. 8(b)(4), a lengthy and complex arrangement of words, is built of interlocking and cross-referential subsections, and hedged by *provisos* and *provisos-to-provisos*. In brief, subsecs. (i) and (ii) of Sec. 8(b)(4) outlaw two kinds of conduct by labor organizations when done for any of the "objects" described in further subsecs. (A) through (D). In paraphrase, subsec. (i) bars unions from "induc[ing] or encourag[ing]" workers to strike or partially strike for any of the listed "objects," and subsec. (ii) makes it unlawful for unions to "threaten, coerce, or restrain any person . . . in commerce or . . . affecting commerce" in aid of any of said "objects." Subsec. (D) contains the "object" description implicated in this case; it speaks of "forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class."

and the same underlying conduct by Local 290. The main focus of the parties' efforts in the trial before me was to supplement the record made before the Board in the 10(k) proceeding.⁴ A review of the Board's 10(k) decision and its aftermath will quickly capture most of the undisputed facts and will help to isolate the ultimate, sufficiency-of-the-evidence issue presented by the case at this adjudicatory stage.

As the Board found, Streimer's employees are represented by a charging party herein, Sheet Metal Workers Local 16 (Local 16), and, prior to Local 290's picketing, Streimer's workers had been installing ducts for an air-scrubber system on a job for Intel Corporation, incidental to which they had also installed some magnehelics devices needed to monitor the working scrubber system. (An "air-scrubber system" uses a fan to pull air from a room through ductwork to a scrubber which removes particulates and other contaminants from the air before it is returned to the room or discharged through exhaust vents to the outside world. These systems are used in facilities requiring a hyperclean environment, such as computer chip manufacturing plants and hospital surgeries. "Magnehelics" refers to a combination setup in which a pressure-sensor inside a chamber is connected by tubing to a nearby or remote gauge that displays the rate of airflow through the chamber. Magnehelics are often installed, as in this case, to measure and monitor the airflow within the ducts of air-scrubber systems.)

The Board (Member Browning dissenting) further found that magnehelics work—specifically, "the installation of tubing to remote magnehelics gauges and the actual installation of all gauges, with associated fittings"—was the subject of a "jurisdictional dispute" between Local 290 and Local 16 whose "merits" the Board was empowered under Section 10(k) to "determine."⁵ In reaching this judgment, the majority satisfied itself at the threshold that there existed "reasonable cause to believe" that Local 290's picketing against Streimer had at least one objective beyond merely advertising an "area-standards" dispute—namely, "a proscribed object of forcing reassignment of the work in dispute to employees represented by Local 290."⁶ The majority further presumed

in this regard that Local 290's object was to compel Streimer to "reassign" the magnehelics work by "halt[ing]" the work of its regular, Local 16-represented crews, and then "employ[ing] an additional group of employees represented by Local 290," whenever it came time for Streimer to install magnehelics on the scrubber ducts its employees were already installing.⁷

The Board specifically relied for its reasonable-cause finding on the following four circumstances, as revealed in the 10(k) hearing record:

- (1) the background of ongoing competing claims to scrubber installation work by the two craft unions involved here; (2) the undisputed fact that a steward's complaint about sheet metal workers performing the work in dispute triggered Local 290's investigation into Streimer's wage practices; (3) the fact that Local 290's letters [to Streimer] purporting to ascertain those wage practices expressly focused on wages and benefits paid by Streimer "to your plumbers and steamfitters[.]" . . . (4) the testimony of Streimer Superintendent Turner that Fullman Company Foreman Jeff Dehaan said that [Local 290 Business Manager] Walters was "putting heat on him" about Streimer doing Local 290 work.⁸

I will revisit these circumstances in due course. For now I note that, after full litigation in the trial before me, the first three circumstances cited by the Board remain essentially undisputed as a factual matter, even though Local 290 might disagree with some of the terms the Board used to characterize them, and definitely disagrees with the apparent significance the Board attached to them when it found "reasonable cause to believe" that Local 290 had a work-reassignment object when it picketed Streimer. But the fourth circumstance cited by the Board—the conversation between a superintendent for Fullman Company, Jeff Dehaan, and Streimer's superintendent, Cliff Turner—is now the subject of conflicting testimony.

Having found reasonable cause to believe that Local 290's picketing had a "proscribed" work-reassignment "object," the Board then addressed the merits of the dispute that the picketing was allegedly done to aid, and ultimately "award[ed]" the magnehelics work to "employees [of Streimer] represented by Local 16."⁹ Finally, the Board specifically ordered Local 290, "[w]ithin 10 days," to "notify the Board's Regional Director for Region 19 in writing whether it will refrain from forcing the Employer [in context, a reference to Streimer], by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination."¹⁰

Under governing law and established procedure, the Board's order to Local 290 to "notify the Regional Director [etc.]" contemplated that if Local 290 were to satisfy the Regional Director that it would in the future "refrain from forc-

⁴Based on an all-party stipulation in the trial, I received into evidence the hearing record in the 10(k) proceeding (i.e., the transcript of testimony and the exhibits). But the 10(k) record was supplemented by testimony from three witnesses, only one of whom, *Matt Walters*, Local 290's business manager, had testified in the 10(k) hearing. Walters, the architect of Local 290's late February-early March 1995 picketing against Streimer, reviewed events about which he had testified earlier, leaving in the aftermath some confusion about precise dates and sequences of material events. In addition, *Jeffrey Dehaan*, a job superintendent for Fullman Company, was invited in the trial to offer his own account of background matters of debatable relevance described by others in the 10(k) hearing, and, in the process, he partly contradicted the 10(k) testimony of Streimer's superintendent, *Cliff Turner*, who did not himself reappear in the trial. Finally we also heard for the first time in this trial from another person mentioned by others in the 10(k) hearing, *Gary Nelson*, who was at material times a Local 290 job steward employed by Fullman as a pipefitter, and who did not materially contradict any of the 10(k) testimony nor any of the testimony of Walters or Dehaan in the trial, but who likewise had trouble with dates, and, to a lesser extent, sequences.

⁵*Streimer Sheet Metal*, supra at 892.

⁶Id. at 892. (Because Member Browning dissented from the reasonable-cause finding, she would have quashed the notice of 10(k)

hearing without determining the merits of the alleged jurisdictional dispute. Id. at 893-895.)

⁷Id. at 893, discussing the "factor" of "Economy and efficiency of operations."

⁸Id. at 892.

⁹Id. at 893.

¹⁰Id. at 893-894.

ing the Employer [etc.],” the underlying charges herein would be dismissed,¹¹ and Local 290 would face no further jeopardy under Section 8(b)(4)(D) for having conducted the prior picketing against Streimer, no matter that the picketing may have been unlawful in the first instance.¹² However, if Local 290 were to fail to satisfy the Regional Director as to its future compliance intentions, the Director would be required to issue a formal complaint on the underlying charges, and the case would be prosecuted and litigated thereafter under rules generally governing all unfair labor practice prosecutions,¹³ but with one, case-engrafted exception—the Board will not permit “relitigat[ion]” in the 8(b)(4)(D) trial of certain “threshold matters” as to which the Board has made findings in the 10(k) proceeding, specifically, “threshold matters that are not necessary to prove an 8(b)(4)(D) violation.”¹⁴

Although Local 290 engaged in no new conduct after the 10(k) decision that might be construed as “inconsistent” with that decision, the Regional Director apparently judged that Local 290 had not complied with the Board’s order to give written notice of its compliance intentions, and thus he issued the consolidated complaint and notice of hearing that led to this trial.¹⁵ The particulars of the complaint deserve further attention: In material part, the Director alleged in the name of the General Counsel that Local 290’s 6 days of picketing against Streimer (allegedly “with signs stating: ‘Streimer Sheet Metal Does Not Pay Area Standard Wages to Pipefitters & Plumbers UA 290’”) was done for a work-reassignment objective within the meaning of subsection (D) of Section 8(b)(4), and was itself conduct banned by subsections (i) and (ii) of Section 8(b)(4) when done for such

an object. More specifically, the complaint alleges that “[a]n object” of Local 290’s picketing was to “force or require Streimer to assign particular work [identified elsewhere in the complaint as “the installation of tubing to remote magnehelics gauges and the actual installation of all gauges, with associated fittings”] to employees who are members of, or represented by [Local 290], rather than to employees who are members of, or represented by, Local 16. . . .” Moreover, on brief, the General Counsel further particularizes the prosecution’s claims as to Local 290’s alleged “object” in the picketing. Thus, she cites nine circumstances which are alleged to add up to “extensive” evidence “that an object of the picketing was to have the remote magn[e]helic gauge and remote tubing work at the Intel project assigned to employees represented by Local 290 rather than to employees represented by Local 16.”¹⁶

Local 290 admits in its answer that it was timely served with the complaint and underlying charges, and that the Board’s jurisdiction is otherwise properly invoked.¹⁷ Local 290 further admitted in the 10(k) proceeding and in the trial that it picketed Streimer on the six identified days in February-March 1995 with signs declaring an “area-standards” purpose.¹⁸ Critically, however, Local 290 denies—as it likewise denied in the 10(k) proceeding—that the picketing had any work-reassignment objective. Rather, Local 290 avers in its answer that it “never engaged in conduct proscribed by Section 8(b)(4)(D),” and further, that “it has not claimed work subject to the [10(k)] award.”

While the issue before me is reasonably well defined by these pleadings, it is worth pausing before discussing that issue further to identify my proper function at this stage of proceedings: The Board found for purposes of the 10(k) decision that there existed “reasonable cause to believe” that Local 290’s picketing against Streimer violated Section 8(b)(4)(D). I am certainly not invited to “review” this threshold judgment, but I am required by governing interpretations of the statutory scheme to revisit the question whether the picketing had a “proscribed” object, and to apply at this “adjudicatory” stage a stricter, “preponderance-of-evidence” standard in judging that question.¹⁹ Moreover, while I am bound by the Board’s 10(k) findings as to certain “threshold matters,” I am nevertheless required to judge the

¹¹ Sec. 10(k) provides, inter alia, that if “the parties” subsequently “compl[y]” with the Board’s 10(k) “decision,” the 8(b)(4)(D) charge or charges giving rise to the 10(k) decision “shall be dismissed.” The corresponding implementing provisions of Sec. 102.36 of the Board’s *Rules and Regulations* further prescribe that post-10(k)-decision “compliance” is to be ascertained in the first instance by the Regional Director, who may dismiss the underlying Sec. 8(b)(4)(D) charge “[i]f satisfied that the parties are complying[.]”

¹² “Section 10(k) quite plainly emphasizes the belief of Congress that it is more important to industrial peace that jurisdictional disputes be settled permanently than it is that unfair labor practice sanctions be imposed upon unions.” *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 576–577 (1961).

¹³ Sec. 101.36 of the *Rules and Regulations* further provides that, “[i]f not satisfied that the parties are complying, the Regional Director issues a complaint and notice of hearing, charging violation of Sec. 8(b)(4)(D) of the Act, and the proceeding follows the procedure outlined in Sections 101.8 to 101.15, inclusive.”

¹⁴ *Longshoremen Local 6 ILWU (Golden Grain Macaroni Co.)*, 289 NLRB 1, 2 fn. 4 (1988).

¹⁵ In the complaint, apart from substantive counts described below, the Regional Director alleges—and Local 290 appears to admit—that Local 290 did not furnish the written assurances contemplated in the Board’s 10(k) decision. These pleadings may be ignored, however, for it would have no bearing on the merits of the case before me even if Local 290 had “refused to promise compliance with the 10(k) determination.” *Golden Grain Macaroni*, supra at 1 fn. 3, and authorities cited therein. As a separate matter, I would assume in any case that I have no jurisdiction to “review” the Regional Director’s precomplaint determination that Local 290 did not furnish satisfactory assurance of future compliance.

¹⁶ G.C. Br., p. 8; my emphasis. The nine circumstances cited by the General Counsel amount to particularizations of the four circumstances the Board relied on in making its reasonable-cause finding in the 10(k) proceeding.

¹⁷ The Board has already recited in its 10(k) decision the charge-filing history of these cases, and its basis for concluding that it has jurisdiction over these cases and these parties. No party in this prosecution has contested these findings, which, at least as to the “threshold” jurisdictional conclusions, are apparently not “relitigable” in any event. *Golden Grain Macaroni*, supra.

¹⁸ In its answer, Local 290 denies the complaint’s summary descriptions of the picketing, which included dates, locations, and, as previously noted, an allegation as to the legend on the picket signs. Considering its admissions elsewhere that it conducted picketing on the dates and at the places alleged in the complaint, it appears that Local 290 intended only to deny that the legends on its picket signs were in the exact form alleged in the complaint. This is a minor discrepancy to which I will return in due course.

¹⁹ *Golden Grain Macaroni*, supra at 2, citing *ITT v. IBEW Local 134*, 419 U.S. 428, 446 (1975), and *NLRB v. Plasterers Local 79*, 404 U.S. 116, 122 fn. 10 (1971).

lawfulness of the picketing in the light of the parties' "re-litigation" during this trial of certain "factual issues concerning the elements of the [alleged] 8(b)(4)(D) violation,"²⁰ including their relitigation of certain matters as to which the Board made findings in the 10(k) decision, and on which the General Counsel now relies as evidence that the picketing had a "proscribed," work-reassignment "object."

Accordingly, considering the language of the complaint, the General Counsel's arguments on brief, and the governing law, I must decide whether the credible evidence in the record as a whole preponderates in favor of a finding that "an object" (even if not necessarily the "sole object"²¹) of Local 290's picketing was to "forc[e] or requir[e] Streimer to assign the [magnehelics] work [at the Intel project] . . . to employees who are members of, or represented by [Local 290], rather than to employees who are members of, or represented by, Local 16." More concretely still, considering the body of evidence the General Counsel now relies on as proof that such an object animated the picketing, the narrow question I must decide ultimately is this:

Where Local 290's picketing was on its face done solely in aid of an "area-standards" dispute with Streimer, and where Local 290 had expressly disclaimed any work-reassignment purpose, and engaged in no concurrent behavior inconsistent with that disclaimer, has the General Counsel nevertheless established a work-reassignment "object" to the picketing simply by proving what is not genuinely in dispute in any case—that Local 290 has at all material times "wanted" for the employees it represents the kind of magnehelics work occasionally being done by Streimer's Local 16-represented workers?

Focusing on this sufficiency-of-the-evidence question, I judge for reasons more fully explained below that the General Counsel's proof fails the "preponderance" test. Accordingly, I will dismiss the complaint.

Supplemental Findings and Commentary²²

I. LOCAL 290'S ADMITTED "JURISDICTIONAL CLAIMS" TO CERTAIN AIR-SCRUBBER SYSTEMS WORK, INCLUDING MAGNEHELICS WORK

The Board found in the 10(k) proceeding that, "[f]or several years, representatives of the Plumbers and the Sheet

Metal Workers [apparently referring to the international unions with which Local 290 and Local 16 are respectively affiliated] have been unable to resolve their dispute about which craft has jurisdiction over various aspects of scrubber duct installation, including the installation of magnehelics."²³ It appears that this finding draws its main nourishment from the 10(k) testimony of Local 290's business manager, Matt Walters, who related that, starting about 2 years before the events that now concern us, the international unions began to try to resolve between themselves a variety of competing claims filtering up from their respective local unions around the country concerning various aspects of air-scrubber systems installations as a whole (and not simply, "scrubber duct installation"). In addition, the record shows that on February 28, 1995, the Plumbers and Sheet Metal Workers international unions reached and published something now called the "*Motorola* agreement." This was a self-described "agreement to resolve a jurisdictional dispute concerning the process vacuum pump discharge system" at a Motorola plant in Chandler, Arizona. But nothing in the record shows that the various "claims" made by the Plumbers and Sheet Metal Workers international unions in the *Motorola* dispute had ever focused on remote magnehelics-installation work, nor does the *Motorola* agreement itself purport to resolve the question of which craft should have jurisdiction over that particular increment of work.

In addition the 10(k) testimony of Walters and of Local 16's representative, Len Phillips, harmoniously shows that, in the period June-November 1994, representatives of Local 290 and Local 16 met at least twice, in Walters' words, "to try to resolve the jurisdictional differences [between those unions] across the spectrum[.]" But Walters further testified that those meetings had "absolutely nothing whatsoever to do with those controls, control tubing and the magn[e]helic gauges[.]" and nothing in the record contradicts this latter assertion. At most, there is a suggestion in Phillips' 10(k) testimony that a claim to magnehelics work may have been implicit in a statement Walters made to him at some point during the June-November 1994 period. Thus, summarizing Walter's remarks at the time, Phillips testified that Walters "felt that all the work from the tools, the machinery and the tools²⁴ back through the scrubber was his. On the down side of the scrubber, the exhaust fan and discharge duct was ours." Walters does not dispute having said something to this effect; indeed, he admitted in the 10(k) hearing that he told Phillips, "If I had control of it and I was making a decision, that it would be everything up to and including the scrubber."

As I see it, Walters' statement to Phillips implies a generalized wish on Local 290's part to get as much scrubber-systems installation work as it can for the workers it represents, and in that sense, then, Walters' statement may be fairly characterized as a broad "claim" to scrubber systems installations. But I find it harder to infer from that statement anything like a "claim" to the disputed magnehelics work, and still harder to infer a "claim" in the sense of an express or

²⁰Id. at 2.

²¹As the Board noted in the 10(k) decision, quoting *Cement Masons Local 577 (Rocky Mountain Prestress)*, 233 NLRB 923, 924 (1977), "[o]ne proscribed objective is sufficient to bring a union's conduct within the ambit of Sec. 8(b)(4)(D)."

²²I incorporate by reference the summary findings I have already made. My further findings focus mainly on details concerning an ongoing intercraft dispute relating to scrubber systems and on details of certain events on the Intel job. The intercraft dispute and the events concerning the Intel job—especially the latter—make up the chief "elements" of the General Counsel's 8(b)(4)(D) case. To avoid extensive factual recapitulation at the analysis stage, I will accompany my findings on some of those points with observations which will influence my ultimate judgment. I will also enter findings regarding certain undisputed surrounding events stressed by Local 290 as exculpatory-events, moreover, which are only briefly adverted to, if at all, in the Board's majority decision in the 10(k) proceeding.

²³*Streimer*, supra, 319 NLRB at 891.

²⁴It appears from Deehan's trial testimony that "the machinery and the tools" refers to the equipment that computer chip manufacturers such as Intel would use in certain "clean rooms," such as the "planer bay" in Intel's "Building D-1-E," infra.

implied "demand" for the "reassignment" of such work from one group or class of workers to another, and even harder to infer that Walters was thereby making a work-reassignment demand relating to *Streimer* or to any other particular employer.

Clearly, therefore, this generalized evidence of a "dispute" as between the crafts relating to "various aspects" of scrubber-systems installations, standing alone, provides no evidence that Local 290 has ever "claimed" the magnehelics work in any direct way. And it therefore seems obvious that this evidence could not alone support the complaint's assertion that Local 290's picketing had a "proscribed" objective of forcing *Streimer* to "reassign" the magnehelics work at Intel to Local 290-represented workers. Indeed, it is not certain in the end how such background evidence, even considered with other evidence discussed below, could shed much light on either the question of the existence of a "claim" by Local 290 to magnehelics work or the question of Local 290's "object" in the picketing.

It is nevertheless reasonably clear from Walter's own testimony in the 10(k) hearing, echoed by him in the trial, that Local 290 has *always* maintained a "claim" of sorts to at least the installation of "remotely"-mounted magnehelics gauges and the tubing and fittings that connect those gauges to the pressure-sensors within the scrubber ducts. As I show below, he effectively conceded that Local 290 believes that such work is properly within Local 290's "jurisdiction" as a general matter, and that Local 290's labor agreements with various contractors "cover" that work, and that, indeed, Local 290's labor agreements establish the "area-standards" for wages and benefits to employees doing that work. Thus, Walters testified as follows in the 10(k) hearing:

Q. So it's your position that the work of installing magn[e]helic gauges, remote magn[e]helic gauges, the tubing to magn[e]helic gauges . . . in connection with the scrubber systems is work that is within the jurisdiction of Local 290, is that correct?

A. That is correct.

Q. And it's work you claim?

A. It is work that we have claimed, yes.

. . . .
A. I am claiming that that work comes under the contract that UA Local 290 has with its employers. It also comes under the contracts that our international employers have.

. . . .
A. My position is that that work comes under the agreement that UA Local 290 has with its contractors which establishes an area standard wage which is the reason that we established the pickets, because . . . an area standard wage was not being paid.

Beyond that, Walters acknowledged a more fundamental "design," as follows:

A. I have designs on work covered by the jurisdiction of our contract and the jurisdiction given to us by the AFL-CIO, including Local 16, under the Rochester decision.

Walters' admitted "position" that magnehelics work is properly the work of employees represented by Local 290 is

grounded in part on his understanding of jurisdictional compacts reached among international craft unions at the start of this century (e.g., the "Rochester decision" of "1903" or "1913"), in part on a supposed broad tradition as between the crafts and in the industry as a whole of ceding to the Plumbers the installation of "piping" to "instrumentation" and "controls" associated with plant heating or cooling systems, and in part on the scope-of-work provisions in labor agreements Local 290 has with certain contractors.²⁵ Obviously, however, the merits of these arguments are not before me to decide, and the only fact of potential relevance to this case is that Local 290, does, indeed, "claim jurisdiction" over the remote magnehelics-installation work in the general sense that it believes that its constituency *should* have such work, and therefore it "wants" that work for the employees it represents whenever it can get it, and indeed, in some cases it regards it as a matter of contract right that its members be given that work when it is done by contractors with whom Local 290 has a labor agreement.

II. MIDWINTER EVENTS ON THE INTEL JOB

At material times, *Streimer*, a contractor-member of a local chapter of a national sheet metal contractors' association, SMACNA, was bound to a SMACNA-negotiated labor agreement with Local 16 covering its construction employees. From a point well before November 1994 through at least May 1995, *Streimer* was a subcontractor on a new-plant construction project for Intel Corporation at its "Aloha campus" site in the Portland area. A joint venture called "Hoffman/TDC" was the general contractor on the Intel job,²⁶ and had responsibility for awarding and adjusting the subcontracts held by *Streimer* and other subcontractors on the site. Cliff Turner was *Streimer*'s superintendent on that job, in charge of crews of *Streimer*'s Local 16-represented workers who were installing scrubber ductwork. As Turner testified in the 10(k) hearing, sometime around mid-December 1994, *Streimer*'s crews began installing ducts in the "planer bay" of "Building D-1-E."²⁷ at the Intel project, using tubular PVC material, rather than sheet metal, the more traditional ductwork medium. Incidental to that work, as Turner further recalled, *Streimer* crews had also installed some remote magnehelics gauges connected by runs of stainless steel tubing to the pressure-sensors in the PVC duct-

²⁵ Walters also finds in the *Motorola* agreement some measure of comfort and vindication for his ongoing "position" that remote magnehelics work is properly done by UA-represented workers. However, this international compact was not reached (or at least not signed or published) until more than 2 months after Walters initiated the area-standards campaign by dispatching his December 21 letter to *Streimer*, infra, and, indeed, was not published until the day after Walters began the area-standards picketing phase of the campaign. Accordingly, the *Motorola* agreement clearly did not inform Local 290's area-standards campaign.

²⁶ It appears that the joint venture is itself composed of two corporations commonly owned by a "Hoffman" entity, and that one of the Charging Parties here, "Hoffman Construction of Oregon," is likewise owned by the same parent entity.

²⁷ I sought to confirm with trial witness Dehaan my impression that the "planer bay" was an area where Intel would use "tools" to shave, or "plane" silicon chips. Dehaan said that if he told me, he would then have to shoot me, because of the highly classified and proprietary nature of Intel's production process. I desisted from further inquiry.

work. As Turner also acknowledged, Streimer crews had previously performed similar remote magnehelics installations in other areas on the Intel job.

Another subcontractor on the Intel job at Aloha, Fullman Company, was bound to a master labor agreement with Local 290 covering employees doing certain work, including the "setting, erecting, and piping of instruments, measuring devices, thermostatic controls, gauge boards, and other controls used in connection with power, heating, refrigerating, air conditioning, manufacturing, mining and industrial work." Local 290-represented workers are competent to perform magnehelics installations, and they have themselves performed these installations when working for contractors bound to Local 290 labor agreements who have been awarded such work on a given project. Jeff Dehaan was Fullman's superintendent on the Intel job, and was in charge of the work being done there by upwards of 170 Fullman plumbers and fitters.²⁸

Local 290's admitted general position that remote magnehelics installations are properly done by employees it represents has obviously been communicated to many of its members and is obviously shared by those members. Thus, although the rather hazy record allows differing interpretations of the precise timing and sequence, there is no dispute that during the period November 1994—early January 1995, Fullman's Local 290-represented workers made various complaints on the subject, some to their union representatives, some to their own foremen on the job, and some to Superintendent Dehaan himself. The first such complaint—"that sheet metal [workers] are doing our work at Intel"—appears to have been voiced by Fullman job steward Gary Nelson in a Local 290 membership meeting in November 1994. Moreover, as I discuss below, sometime between mid-December 1994 and mid-January 1995, Nelson was the party who made a specific complaint to Fullman's superintendent, Dehaan, about Streimer's installing of "remote" magnehelics in the planer bay in building D-1-E, a complaint which soon led to a decision by the general contractor on the Intel job to transfer to Fullman the remainder of the remote magnehelics installations in the planer bay of that building.²⁹

²⁸ Although the Board found in the 10(k) decision that Streimer's Turner was a "site superintendent," it characterized Fullman's Dehaan in that decision as a "site foreman." *Streimer*, supra at 891. In finding that Dehaan was Fullman's "superintendent" on the Intel job, I rely on Dehaan's testimony in the trial not only as to his job title, but as to his top status in the three-tiered supervisory hierarchy on that job, in which four "general foremen" themselves "reported" to Dehaan, and who were themselves reported to by subordinate "foremen," who were themselves in charge of various crews of Fullman's plumbers and fitters.

²⁹ It is not disputed that Nelson, among others, complained to Fullman's Dehaan about Streimer's installing remote magnehelics in the planer bays, nor that Dehaan and Streimer's Turner soon had a conversation about this, nor that Streimer soon lost this work to Fullman. What remains in doubt from the testimony of Nelson, Dehaan, Turner, and others is precisely *when*, in relation to Local 290's letters to Streimer and its subsequent picketing, *infra*, this series of events occurred. In this regard, the Board stated in the 10(k) decision that "Turner . . . testified about a January 1995 conversation with Jeff Dehaan" which led in "mid-January" to Turner's "turn[ing] over the remaining 2 to 3 days of magnehelic installations to the Fullman Co." *Streimer*, supra at 891. I note further, however, that in the 10(k) hearing, Turner did not independently recall that

Some events leading to this midwinter "reassignment" on the Intel job were invoked by the Board in the 10(k) decision for purposes of finding "reasonable cause to believe" that the later picketing had a work-reassignment objective. The General Counsel relies heavily on these same events to establish that the picketing violated Section 8(b)(4)(D). I deem it necessary, therefore, to record in greater detail my findings as to how it came to be, as the Board found in a preliminary summary of facts, that Turner "turned over the remaining 2 to 3 days of magnehelic installation to the Fullman Co."³⁰ And in making the following findings, I rely primarily on the credible testimony of Fullman's Dehaan in the trial before me, as marginally supplemented by Nelson's and Walters' testimony in this trial, and I ascribe little or no weight to any contrary testimony on the same subject offered by Streimer's Turner in the 10(k) hearing.³¹

Sometime in the period mid-December 1994 to mid-January 1995, Local 290 steward Nelson came to Superintendent Dehaan in front of the "pipe shop." Nelson said there was a "problem" in the planer bay—that Streimer's sheet metal workers were installing tubing to magnehelics gauges—and that Local 290 would be informed of this. Dehaan told Nelson he would look into it, commenting that "they shouldn't be doing that piping." Moments later, Scott Montgomery, a Fullman "General Foreman," voiced a similar concern to Dehaan. Dehaan and Montgomery then went to the planer bay in question and observed Streimer's workers installing one-quarter-inch stainless tubing to remotely mounted magnehelics gauges. As Dehaan returned from this inspection, he encountered Mel Davis, a Local 290 business agent

these events occurred in "January," but rather, merely adopted the assumption of his questioner, Charging Party Hoffman's attorney, that the starting event in the series—the conversation with Dehaan—occurred "[i]n January." Beyond that, Turner testified elsewhere that Streimer first began work in the planer bay of building D-1-E in mid-December, and he specified later that it was "approximately middle of December" when "the problems seemed to arise" regarding Streimer's installation of the "stainless tubing for the remote magnehelics" in the planer bay 10(k) transcript, vol. II, p. 368: 17–20.

Dehaan's memory of the timing, incidentally, was more vague; he initially recalled that his conversation with Turner occurred sometime near the end of 1994, perhaps "November," but then subsequently allowed that it could have been still "later." He confirmed, however, that the conversation occurred soon after Streimer began work in the planer bay of building D-1-E.

³⁰ *Id.* at 891.

³¹ Dehaan presented as a relaxed, unguarded, and apparently sincere witness. Beyond that, his narrative account of relevant events—particularly of his conversation with Turner—was contextually more detailed and coherent than was Turner's testimony on the same subjects in the 10(k) hearing. Also, much of Turner's 10(k) testimony concerning these events was shaped by leading and conclusionary questioning by Charging Party Hoffman's attorney. In addition, Turner was never called in this trial either to reaffirm his 10(k) testimony or to comment on certain contradictory or variant features in Dehaan's account; accordingly, I had no opportunity to observe Turner's demeanor or to further test his memory of pertinent events. Especially in these circumstances, therefore, where the "credibility" of an account given elsewhere by a "missing witness" is pitted against that of an apparently credible "live" witness in the trial before me, I prefer to rely on the latter's version, and to give no weight to the former's account except insofar as it is harmonious with the latter's.

with responsibilities for servicing Local 290's labor agreement with Fullman at the Intel job. Davis told Dehaan that he had gotten a phone call from someone on the site about the magnehelics work in question, and also said that he wanted the work assigned to "us." Dehaan was still a member of Local 290 although now functioning as a top boss for Fullman, readily agreed that the work was Local 290 work, and told Davis that he was already planning to talk to Streimer's Turner about this and would get back to Davis after he had done so.³² Dehaan then went to Streimer's jobsite office and met with Turner in the presence of Kelly True, a Streimer foreman.³³ Dehaan complained that Streimer's employees were doing magnehelics tubing and gauge work that was "our instrumentation work." Turner acknowledged this but said that "TDC" (i.e., the general contractor) had nevertheless "awarded" the work in question to Streimer. Dehaan said he intended to "go to TDC and get that changed around, because that's not right."

In the 10(k) decision, the Board noted that, "According to Turner, Dehaan said that Matt Walters . . . was 'putting heat on him' about Streimer doing Local 290 work."³⁴ And this alleged statement by Dehaan to Turner was the last of the four circumstances the Board relied on to find reasonable cause to believe that Local 290's picketing in late February-early March had a "proscribed," work-reassignment "object."³⁵ Considering this, I must digress to record and explain my further finding that Dehaan did *not* tell Turner that "Matt Walters" (or anyone else from Local 290) was "putting heat" on him over the matter. I would rely on Dehaan's own specific denial on this point. Moreover, despite the Board's characterization in the 10(k) decision, I note that Turner did not *directly* "testify" that "Dehaan said that Matt Walters . . . was 'putting heat on him' about Streimer doing Local 290 work." Rather, the Board's characterization of Turner's 10(k) testimony appears to reflect a reassembling of certain fragments in Turner's testimony. Thus, when Turner was first invited to recall the conversation with Dehaan, he testified, simply,

Jeff Dehaan came to me and told me that he had got a visit from his—from Local 290, that there had been

complaints that that work was fitters' work, and there needed to be a resolution on it.

To be sure, Turner then answered "yes" to counsel's leading question, "Did Mr. Dehaan indicate to you that he had spoken with Matt Walters?" However, Turner never thereafter attributed to Dehaan the statement that "Matt Walters . . . was 'putting heat on him' about Streimer doing Local 290 work." Rather, at a later point, incidental to explaining why he agreed to relinquish the work in the planer bay, he summarily *characterized* Dehaan's earlier statements in the following generalized manner (Emphasis added.):

Because he [Dehaan] was *expressing* that he was getting a lot of heat on it, that he'd got a lot of complaints . . . I instructed my people to pull off that tubing and turn the parts and pieces over to him.

It is a separate question, one I need not reach, whether it would be relevant to the issue of Local 290's "object" in the picketing that occurred substantially later even if Dehaan had, in fact, received "heat" from Walters or other Local 290 agents about Streimer's performance of magnehelics work. But considering the apparent significance the Board attached to Dehaan's supposed statement to Turner, I emphasize four points before returning to my narration of events: First, I credit Dehaan when he denied that he ever told Turner that he was "getting heat from the union" over any magnehelics-related issue. Second, it is clear from Dehaan's testimony that any conversation he had with "Matt Walters" on this subject did not occur until some days *after* his conversation with Turner; therefore, I find that he did not mention Walter's name to Turner. Third, even if I were to ignore Dehaan's testimony and rely instead on Turner's 10(k) testimony, I would not interpret it as intending to attribute to Dehaan the literal expression that he was "getting heat," much less that he intended to attribute to Dehaan the literal statement that "Matt Walters . . . was 'putting heat on him' about Streimer doing Local 290 work." Fourth, even if Turner's testimony could be construed as literally attributing such an expression to Dehaan, it would be classic hearsay, perhaps admissible for the limited purposes of a 10(k) proceeding, but plainly inadmissible in an adjudicative proceeding such as this one to prove the truth of the supposed out-of-court assertion by Dehaan.³⁶

Within an hour of his meeting with Turner, Dehaan found TDC's representative, Ken Brinster, on the jobsite, and complained that TDC had "wrongly" given the magnehelics tubing-and-gauge work to Streimer. He also showed Brinster some document purporting to support the notion that the work was properly the work of Fullman's Local 290-represented crews. (Dehaan could not recall at the trial what it was he showed to Brinster.³⁷) Brinster then agreed to take

³² On brief, the General Counsel and the Charging Parties make much of Dehaan's membership in and supposed loyalties to Local 290, and further suggest in a variety of ways that Dehaan, in taking up the matter thereafter, was acting as an agent of Local 290. (Thus, for example, the General Counsel argues (Br. p. 9) that Dehaan was "acting on behalf of Local 290 rather than his [e]mployer.") For reasons further noted below, I think that these suggestions are essentially irrelevant to the question before me. For now, I observe simply that the complaint did not allege that Dehaan was Local 290's agent and, therefore, the issue was not consciously or fully litigated by the parties. Moreover, if this record were seen as adequate to judge the question, I would be hard-pressed to find that Dehaan was acting "for" Local 290, as distinguished from acting in his own employer's interest. Thus, as Dehaan himself explained, Fullman's sub-contract at Intel provided for compensation on a "time and materials" basis, and therefore it was clearly in Fullman's financial interest—and not simply Local 290's interest—for Fullman crews to perform the magnehelics work then being done by Streimer's workers.

³³ True was not called as a witness in the 10(k) hearing nor in the trial.

³⁴ *Streimer*, supra at 892.

³⁵ *Id.* at 892.

³⁶ Moreover, as Dehaan was not alleged or shown to have occupied anything resembling an agency role for Local 290, the assertions attributed by Turner to Dehaan cannot be received under Rule 801(d)(2), *Federal Rules of Evidence*, as nonhearsay "admission[s]" by [a] party-opponent."

³⁷ Dehaan thought at one point that the document might have been the *Motorola* agreement, but that agreement was not published until February 28, 1995, a date which clearly fell well after the Dehaan-

Continued

steps to transfer the work, and the materials associated with it, to Fullman, and so advised Streimer's Turner, who acquiesced. Streimer's crews stopped doing this work the same day, soon after Dehaan's meeting with Brinster. Fullman's crews took it over within a few days thereafter.

Within a few days of Dehaan's meetings with Turner and Brinster, Local 290's Walters called Dehaan at the jobsite and asked him about Streimer's performance of magnehelics tubing work. Dehaan told Walters, *inter alia*, about the work in the planer bay, and explained that he had persuaded TDC's Brinster to transfer the work to Fullman crews. Walters replied, "Good."³⁸

The foregoing evidence illustrates once more what is uncontroverted in any case: Local 290 wants the magnehelics works for the workers it represents, is not shy about making that desire known, and will gladly accept the work whenever a contractor with power over the work can be persuaded to allocate it to those workers. I emphasize, however, that the record is utterly lacking in evidence that Local 290 engaged in any "inducements," or "threats," or any other "proscribed conduct" under subsections (i) or (ii) of Section 8(b)(4) to secure either Dehaan's agreement to take the issue to Brinster or Brinster's apparently voluntary agreement to "re-award" the planer-bay work in question to Fullman and its workers. Thus, for all further purposes, I will treat Local 290 as having done no more than make a lawful "*Servette* appeal" to Dehaan³⁹ to get the planer-bay work transferred to Fullman's crews—an appeal, moreover, which Dehaan obviously greeted with sympathy, and clearly did not regard as "heat" from Local 290.⁴⁰

A final note about sequence and timing: There is no dispute that the foregoing events at the Intel job preceded Local 290's late February–early March 1994 picketing. It is uncertain, however, whether these events occurred before or after

Walters wrote his December 21 letter to Streimer, *infra*, seeking information from Streimer about its compensation and benefit programs. It is also uncertain how long was the *hiatus* between the events leading to the reallocation by the general contractor of the planer-bay work and the February 27 start of Local 290's 6-day picketing campaign (which, incidentally, was never conducted at the Intel job, but only at Streimer's Portland shop headquarters, and—on March 3, 1995—at a different Streimer jobsite, the Oregon Health Sciences University). I'm not certain we need an answer to either question. (I note that the parties themselves tend to be vague about such questions of sequence and timing in their briefing of these facts, and that no one makes an issue of such matters.) However, if the precise timing matters to the outcome—and I don't think it does—I can find no reliable evidence that would allow such a finding. I have noted that Turner was prompted by a leading question to adopt "January" as the month in which he had the discussion with Dehaan that soon led to TDC's reassignment of the magnehelics work in the planer bay to Fullman, but testified elsewhere that Streimer's planer-bay work began sometime around mid-December, and that it was at about the same time that "the problems seemed to arise" regarding Streimer's installation of the "stainless tubing for the remote magnehelics." With both facts in mind, I retain doubt that Turner was accurate in remembering that TDC's eventual reassignment of that work took place as late as "mid-January, sometime." Where I had no opportunity to view Turner's demeanor, nor to test his own memory regarding the timing, where the parties never focused their litigation efforts on the precise timing, and where there is no independent evidence that might help resolve the question, I simply find that the *hiatus* between the Intel reassignment and the later picketing by Local 290 was at least 45 days but probably not more than 75 days, and was in either case a "substantial" one.

III. THE "AREA-STANDARDS" CAMPAIGN

Based largely on the uncontroverted testimony of Walters in both the 10(k) hearing and the trial, and the corroborative 10(k) testimony of Local 290 Business Agent Shropshire, I find as follows regarding the origins and details of the picketing campaign.

A. Local 290's Investigation

Whether as a result of Nelson's complaint in a November 1994 union meeting, or as a result of further complaints as time went on that Streimer's workers were still performing or were scheduled to perform more magnehelics work at Intel, Walters made a number of inquiries, including by calling Fullman's Dehaan personally at one point, but more generally by instructing his subordinate business agents to try to ascertain the extent of Streimer's performance of this work and the rates it paid to the employees assigned to do that work. Based on reports from these sources, and on his own independent knowledge of pay rates under Local 16's contracts, Walters came to believe by some point before December 21, 1994, (a) that Streimer had already performed magnehelics work on the Intel job, (b) that Streimer was paying its workers doing that work at the standard hourly rates established in its contract with Local 16, which was lower than the applicable rate under Local 290's contracts for

Brinster meeting. Therefore, I find that it was not the *Motorola* agreement.

³⁸In the 10(k) hearing, Walters acknowledged having a conversation with Dehaan ("in February," as he then recalled) but stated that he was not then made "aware" that the planer-bay work had been transferred to Fullman. In the trial, however, Walters further recalled that Dehaan had told him that the problem had been "resolved." To the extent it might matter, I find from Dehaan's more specific memory that Walters learned from Dehaan not only that the immediate issue of Streimer's doing magnehelics installations in the planer bays had been "resolved," but that it had been resolved by TDC's decision to transfer the planer-bay magnehelics work to Fullman crews.

³⁹*NLRB v. Servette, Inc.*, 377 U.S. 46, 51 (1964), holding:

[T]he managers were asked [by the union] to make a managerial decision which the Board found was within their authority to make. Such an appeal would not have been a violation of Sec. 8(b)(4)(A) before 1959, and we think that the legislative history of the 1959 amendments makes it clear that the amendments were not meant to render such an appeal an unfair labor practice.

⁴⁰Because there was no illegality in Local 290's appeal to Dehaan, I find it unnecessary to address Local 290's arguments on brief seeking to excuse its conduct in this instance as having a lawful, work-"retrieval" purpose, which, if true, might have permitted it to picket or engage in other conduct in aid of that purpose that would otherwise be banned by subsecs. (i) or (ii). The point is, there is no contention in the first instance that Local 290 put any *unlawful* forms of "heat" on either Fullman or TDC, the general contractor, to secure for Fullman the magnehelics work in the planer bay of Building D-1-E.

workers doing that work, and (c) that Streimer was likely to remain on the Intel site until May 1995, and to perform more magnehelics installations.

I note that Walters' beliefs were not shown to have been mistaken; indeed, they are fully harmonious with the evidence of record.

B. Letters to Streimer and Conversations with SMACNA's Blake

Walters dispatched a letter to Streimer on December 21, 1994, stating in pertinent part as follows:

Your business is operating within the geographic jurisdiction of . . . Local No. 290. For many years, our labor organization has worked to ensure that plumbers and steamfitters . . . receive a fair hourly wage and fair pension and health insurance benefits.

It has come to our attention that your business does not pay prevailing wages and fringe benefits to your plumbers and steamfitters. In order for us to insure that our information is accurate, please respond to the following questions within 10 days.

In the balance of the letter, Walters asked Streimer to "list the hourly wage rate of each of your plumbers and steamfitters, as well as his or her status . . . [and] the fringe benefits . . . that are available to your employees at no cost[.]" and, in the case of "medical benefits," to "advise whether the employer pays the full premium for the employee and his or her family[.]" and to "indicate the monthly cost that you pay for medical, dental and vision benefits for your employees and [their] dependents[.]" and, finally, to "describe the pension plan, if any, that is available for your journeymen and apprentices."

By February 4, 1995, Walters still had received no reply from Streimer to the letter he had sent some 45 days earlier, and on that date, he dispatched another letter to Streimer, reminding Streimer of his initial letter and enclosing a copy of it. Walters also reiterated his original request for information and now asked that Streimer respond by February 24. He also said as follows:

Absent evidence to indicate your business pays area standard wages and fringe benefits . . . Local 290 intends to publicize the fact that your plumbers and steamfitters receive wages and fringe benefits which are inferior to Union negotiated wages and fringe benefits. This publicity will be done through handbilling and peaceful picketing at your business and jobsites where your employees perform work.

We wish to make clear that . . . Local 290 does not intend to interfere with the right of your employees to work without becoming members of . . . Local 290, nor does it make any demand that you recognize or enter into a collective bargaining agreement with . . . Local 290. Our only intention throughout the course of this publicity is to inform the public that your employees receive substandard wages and benefits.

As indicated at the foot of his letter to Streimer, Walters sent a copy of the letter to Bob Blake, the director or executive secretary of the local SMACNA chapter that represented

Streimer and other sheet metal contractors for various labor-relations purposes. Walters' testimony in both the 10(k) hearing and the trial suggests that, by February 4, he had already had one or more conversations with Blake regarding Streimer's performance of remote magnehelics work, and that he had one or more further discussions with Blake after sending the February 4 letter. Blake did not testify in the trial nor in the 10(k) hearing. From Walters, I find that during one or more of these conversations, he told Blake, *inter alia*, that the "dispute was over the magnehelic gauges and the tubing," but reiterated that Local 290 "was not attempting to represent any of Local 16's people, and we were not attempting to replace them; that all we wanted to see was that those people . . . were paid the proper wages and benefits."⁴¹ I further find that Blake, in a post-February 4 conversation with Walters, proposed to set up a meeting between Streimer and Walters to discuss the issue further. Walters agreed, and he and Blake made a tentative date to hold the meeting on or about February 26. Walters then decided to postpone the threatened picketing pending the meeting with Streimer. However, on or about February 26, Blake called Walters and canceled the meeting, and, as a consequence, Walters authorized picketing to begin on February 27.

Before returning to the next stage of my narration, I deem it appropriate again to digress to address the significance of Local 290's letters to Streimer, particularly the references in them to "plumbers and steamfitters": In the 10(k) decision the Board cited these references as one of the circumstances it relied on for its reasonable-cause finding. Thus, the Board said, "Local 290's letters purporting to ascertain [Streimer's] wage practices expressly focused on wages and benefits paid by Streimer 'to your plumbers and steamfitters[.]'"⁴² The Board then went on to state as follows:

[T]he Respondent may have been seeking to ascertain the wages of the employees then performing the work, but the fact that Respondent referred to these employees as "plumbers and steamfitters" strongly suggests that Respondent, at least in part, was claiming the work as its own, which Streimer did not employ [sic], rather than to [sic] the sheet metal workers whom Streimer did employ to perform the work in dispute.^[43]

⁴¹ The quotations are from Walter's 10(k) testimony. Elsewhere in that testimony, Walters also recalled that he told Blake that "this was no attempt at all to organize Streimer, to take the work away from Streimer, to replace sheet metal people with our people[.]" and that Local 290's "concern was the fact that individuals working for Streimer were being paid less than area standard wages to do control work, specifically the magn[e]helic gauges and the remote tubing." He also recalled that he told Blake "on at least two occasions" that "we will pull those pickets the day that they [Streimer's workers] start getting paid the proper wages according to area standards." His testimony in the trial was to the same effect.

⁴² *Streimer*, supra at 892.

⁴³ Id. Apparently due to editorial oversight, the concluding clauses in the quoted passage from the Board's slip opinion seem to have been misplaced. I assume that the passage was intended to read in pertinent part as follows:

[T]he fact that Respondent referred to these employees as "plumbers and steamfitters," which Streimer did not employ, rather than to the sheet metal workers whom Streimer did employ to perform the work in dispute, strongly suggests that Respondent, at least in part, was claiming the work as its own.

It is clearly true that Walters "expressly" referred to "plumbers and steamfitters" in both his December 21 and February 4 letters to Streimer.⁴⁴ It is also apparent that Local 290's reference in these letters to "plumbers and steamfitters" was "strong" evidence to the majority of an implicit "claim" by Local 290 of its members' right to perform any further magnehelics work Streimer might be planning on doing. (This is how Member Browning understood the quoted passage in her dissent, and it was this meaning which she attacked as "def[y]ing] common sense."⁴⁵) Clearly, moreover, the significance to the Board of Walters' references to "plumbers and steamfitters" lay in the fact that Streimer did *not* employ "plumbers and steamfitters . . . to perform the work in dispute," but *did* employ "sheet metal workers" to perform that work. Even after thus construing the quoted passage, however, I am left wondering whether the assertion that Streimer employed "sheet metal workers," but not "plumbers and steamfitters" to "perform the work in dispute" may involve no more than semantical tail-chasing.⁴⁶ Thus, I remain in doubt about the reasoning leading the majority to infer that the reference to "plumbers and steamfitters" implied a "claim" to the work found to be "in dispute," and to infer further, apparently, that such an implied claim to the magnehelics work tended to establish that Local 290 had a work-reassignment "object" in its subsequent picketing.

A sense of deference inclines me to accept the Board's judgment that the references to "plumbers and steamfitters" implied, "at least in part," that Local 290 was "claiming the work as its own." But in my adjudicative role, I am compelled to note my personal judgment that, to the extent such a "claim" is implied by the references to "plumbers and steamfitters," it would be hard to distinguish it from the general "claim" of entitlement to magnehelics work that Local 290 has admittedly maintained at all material times, and harder still to interpret such references as a "claim" in the sense of a "demand" that Streimer reassign the work to Local 290. Indeed, if I am free to rejudge the significance of the reference to "plumbers and steamfitters," I would

⁴⁴ It is equally clear, however, that in Walters' December 21 letter, a copy of which he enclosed with the February 4 letter, Walters had also "expressly" referred in several passages to Streimer's "employees," and, in one passage, to Streimer's "journeymen and apprentices."

⁴⁵ *Id.* at 894.

⁴⁶ "Sheet metal workers" are specialists in, among other things, fabricating and installing ductwork systems, and ductwork is usually constructed of square-formed "sheet metal," hence the craft name. "Plumbers and steamfitters" (and/or "pipefitters") are specialists in, among other things, installing piping systems, and this "plumbing" craft draws its name from the fact that, historically and in this century, molten lead—*plumbum* in Latin—was used to seal pipe joints.

But were Streimer's crews of "sheet metal workers" at Intel doing any "sheet metal work" when they performed installations of ductwork made of plastic (i.e., PVC) tubes, and when they did associated installations of stainless steel tubing to remote magnehelics gauges? Likewise, when Fullman's crews of "plumbers and fitters" subsequently performed the same remote magnehelics work at Intel, were they doing any "plumbing" work? Or is there perhaps a certain sterile circularity lurking in an argument grounded in the assertion that Streimer *did* employ "sheet metal workers," but did *not* employ "plumbers and steamfitters" to "perform the work in dispute?"

construe it as merely an attempt to explain or justify Local 290's *interest* in Streimer's pay and benefit practices, i.e., as an implicit assertion that Local 290's interest arose from the fact that Streimer's crews were doing work that Local 290-represented plumbers and fitters *also* did, and for which Local 290's labor agreements set the area-standards that Local 290 was interested in maintaining. (This, incidentally, is essentially what Walters himself testified—both in the 10(k) hearing and in the trial—was his reason for referring to "plumbers and steamfitters" in the letters. And his uncontradicted testimony concerning his prepicketing communications with SMACNA's Blake shows that he made this point "expressly" to Blake in the course of repeatedly *disclaiming* any wish to take the work away from Streimer's crews—a disclaimer, moreover, which Walters had *also* "expressly" declared in his February 4 letter to Streimer.) Accordingly, particularly in the light of Walters' repeated disclaimers of any work-reassignment objective, I wonder how Walters' references to "plumbers and steamfitters" could be taken to imply any *meaningful* "claim" to the work at all, as distinguished from merely implying Local 290's legitimate *interest* in Streimer's pay rates and benefits for its workers when they did remote magnehelics work.

C. The Picketing

The parties stipulated in the 10(k) hearing, and I find, that Local 290's picketing took place at Streimer's Portland shop headquarters on February 27 and 28, and on March 6, 7, and 8, and that on March 3, pickets appeared at Streimer's jobsite at a project for Oregon Health Sciences University.

The 10(k) testimony further shows, as the Board found, that during the OHSU picketing, one truckdriver turned around without making a delivery to the site, and about 100 employees working for one or more other contractors at the site stopped working and milled around near their respective jobsite offices. But such evidence of the "effects" of the picketing has no bearing on the merits of this case. Thus, if a work-reassignment objective tainted the picketing, it would not matter under Section 8(b)(4)(D) whether or not the picketing triggered a work stoppage, because "picketing" for such an object is normally presumed to constitute by itself both an unlawful "inducement" to strike under subsection (i), and an unlawful "threat" under subsection (ii) that such a strike will occur.⁴⁷ And, by contrast, if the picketing were

⁴⁷ In its 10(k) decision, the Board implicitly held—and Local 290 does not dispute—that picketing and threats to picket for a work-reassignment object are among the types of "inducement" or "threat" activity banned under subsecs. (i) and (ii), respectively. And although the point is only rarely explicated in cases arising under Sec. 8(b)(4), it is established as a general rule that when a union conducts even "peaceful picketing" for any of the "objects" described in subsecs. (A) through (D), such "picketing" (as distinguished from mere "handbilling") is regarded as a "signal" to any nearby workers—especially organized workers—to stop working, and thus amounts to conduct proscribed by subsecs. (i) and (ii). See generally *IBEW Local 501 (Samuel Langer) v. NLRB*, 341 U.S. 694, 700–703 (1951). See also, e.g., *Laborers Local 304 (Herring & Worley)*, 282 NLRB 100, 102, and cases cited at fns. 17 and 18 (1986). And, as to "picketing" for an 8(b)(4)(D) object, see, e.g., *Gundle-Lining Construction Corp.*, 1 F.3d 1419, 1423–1424 (3d Cir. 1993). Moreover, the point is implicit in the "second proviso" to Sec. 8(b)(4), which exempts "publicity *other than picketing*" from its general bans.

conducted solely for a lawful area-standards purpose, and was not conducted so as to "enmesh neutrals," it would be treatable as lawful, "primary"-strike activity, beyond the reach of Section 8(b)(4)'s proscriptions, without regard to the fact that the picketing may have had the "incidental" effect of causing employees of "neutral" employers to stop working.⁴⁸

D. The Legends on the Signs

There remains a small, but confusing question of fact on this record as to what Local 290's picket-signs said, and how they were punctuated and otherwise styled. As previously noted, the complaint alleges (and Local 290 denies) that the signs read,

Streimer Sheet Metal Does Not Pay Area Standard Wages to Pipefitters & Plumbers UA 290.

The question was not litigated before me; nor has the General Counsel identified on brief any evidence of record that supports the complaint's version of the legend on the signs. Moreover, the complaint allegation is a curious one considering that the Board found in the 10(k) decision that the signs contained a legend that differed from the complaint's version in several respects, such as in the uses of upper and lower case letters—and, most notably, in the Board's use of an "em-dash" (like the one introducing this clause) to separate *Local 290* from the preceding "message"-text. Thus, the Board found that the picket signs said,

Streimer Sheet Metal does not pay area standard wages to plumbers and pipefitters—Local 290.^[49]

From my review of the 10(k) transcript, it appears that the Board's finding (and its predominant lower-case styling) was grounded in a stipulation of the parties near the beginning of the hearing that, "in all instances," the picket signs read,

Streimer does [sic] pay area standard wages to pipe fitters and plumbers, UA 290.

Obviously, however, there was a missing *not* in the stipulation as thus transcribed. (In the light of Walters' two recent letters to Streimer, it would be ludicrous to suppose that Local 290's picket signs were purporting to "protest" that Streimer's wages and benefits *matched* area-standards set in Local 290's contracts.) Just as clearly, the Board corrected this mistake in its finding. (It still remains unclear, however, what the Board relied on when, beyond supplying a missing *not* in the stipulated text, it added to the stipulated text the words *Sheet Metal* behind *Streimer*, and inverted the placement of *pipefitters* and *plumbers*, and replaced the comma preceding *Local 290* with an em-dash.⁵⁰)

⁴⁸ See, e.g., *NLRB v. International Rice Milling Co.*, 341 U.S. 665 (1951).

⁴⁹ *Streimer*, supra at 892.

⁵⁰ Local 290's brief suggests a possible explanation: At fn. 2 on p. 20, counsel for Local 290 attributes the missing *not* in the stipulation as transcribed either to simple "slip of the tongue or the transcriber's keyboard." And counsel further represents that "Local 290 moved in its post-[10(k)] hearing brief . . . to correct the transcript in this regard." Thus, it may be that the Board, in supplying the missing *not* and in other ways recasting the stipulated text of the

As noted, the General Counsel has not identified a record source for the complaint's version of the picket-sign language, and perhaps more significantly, has nowhere challenged the Board's own variant finding on this point (nor has any other party). In all the circumstances, I adopt the Board's finding, which I prefer, moreover, because the Board's insertion of an em-dash before Local 290's name, and its use of lower-case letters for *plumbers* and *pipefitters*, combine to make it grammatically clear that Local 290 was the *author* of the message on the sign, but was not itself a *subject* of the message, i.e., was not trying to portray *itself* as a would-be recipient of "area standard wages."

IV. ANALYSIS; CONCLUSIONS OF LAW

A. The Issue Restated

As I discussed at the outset, the case in the end raises a sufficiency-of-evidence question which I initially chose to express in these terms:

Where Local 290's picketing was on its face done solely in aid of an "area-standards" dispute with Streimer, and where Local 290 had disclaimed any work-reassignment purpose, and engaged in no concurrent behavior inconsistent with that disclaimer, has the General Counsel nevertheless established a work-reassignment "object" to the picketing simply by proving what is not genuinely in dispute in any case—that Local 290 has at all material times "wanted" for the employees it represents the kind of magnehelics work occasionally being done by Streimer's Local 16-represented workers?

In the light of my findings and supplemental observations, supra, it should be reasonably clear why I stated the ultimate question in these terms, and used *wanted* in this formulation of the question, rather than another verb, such as *claimed*. But I must acknowledge that the Board, for "reasonable-cause" purposes, at least, found it appropriate to use *claim* as the verb that more nearly captures Local 290's posture regarding the remote magnehelics work yet to be performed by Streimer's crews. Thus, in deference, I will incorporate that verb into two, alternative restatements of the issue as I still see it:

(1) Do the facts as I have found them preponderantly show that Local 290 was in any meaningful sense "claiming" the magnehelics work yet to be done by Streimer's workers at the Intel job?

(Or)

(2) Even if Local 290 was in a general sense "claiming jurisdiction" over magnehelics work, is such an abiding "claim" so inherently inconsistent with picketing to secure compliance with area-standards that the picketing must be *presumed* to have been motivated, at least in part, by an ulterior, work-reassignment objective—specifically, to pressure *Streimer* into "reassign-

picket signs, was, sub silentio, granting whatever "motion to correct" Local 290 had filed.

ing" the disputed work to be performed in the future at Intel to employees represented by Local 290?

I have studied the cases cited in the parties' briefs, and have done independent research. None of the parties pretends to have discovered any strict factual precedent under Section 8(b)(4)(D), nor have I found any.⁵¹ (This should not be surprising, considering that the Board's 10(k) decisions usually bring an effective end to the dispute without need for final adjudication of the alleged 8(b)(4)(D) violation.) However, several cases discussed further below, arising primarily under Section 8(b)(7)(C) of the Act, have dealt with questions that I regard as closely analogous to the ones I have posed above, and the Board's reasoning in those cases persuades me that the answer to either formulation of the question must be "No."

B. The Presumptive Lawfulness of Area-Standards Picketing

Picketing aimed solely at getting an employer to comply with "area-standard" wages and benefits for its employees, or certain classes of them, is not activity barred by Section 8(b)(4)(D).⁵² Indeed, because "pure" area-standards picketing falls under the general category of traditional "strike" activity insulated by Section 2(13) of the Act, neither is it subject to the special proscriptions against picketing for a "recogni[tional] or bargain[ing]" "object" as set forth in Section 8(b)(4)(C)⁵³ and 8(b)(7).⁵⁴ And this is so even though the Board recognizes that, "in the long view all union activity, including strikes and picketing, has the ultimate economic objective of organization and bargaining."⁵⁵

C. Local 290's Jurisdictional "Claims" as Evidence of a "Proscribed Object"

When the Board referred in the 10(k) decision to Local 290's supposed work-reassignment object in the picketing as a "proscribed" object under Section 8(b)(4)(D), it was using a quite familiar shorthand reference to a somewhat more subtle set of relationships between and among the subsections of Section 8(b)(4). Thus, subsection (D) of Section 8(b)(4), standing alone, is descriptive, not proscriptive in nature.

⁵¹ I think one 8(b)(4)(D) case cited by Local 290, *IBEW Local 640 (Stromberg-Carlson)*, 228 NLRB 1078 (1977), rev. denied 580 F.2d 939 (9th Cir. 1978), is largely dispositive, leaving in doubt only what actions by a union might constitute in the Board's view a "demand or request for [a] work assignment on behalf of its members."

⁵² *Stromberg-Carlson*, supra, 228 NLRB at 1078.

⁵³ See *Laborers Local 41 (Calumet Contractors Assn.)*, 133 NLRB 512 (1961), where, on reconsideration, the Board reversed its prior holding (130 NLRB 78, 81-82 (1961)) that area-standards picketing necessarily entailed a proscribed "recognitional" or "bargaining" objective within the intent of Sec. 8(b)(4)(C). Instead, the Board held on reconsideration that area-standards picketing "is not tantamount to nor does it have an objective of recognition or bargaining[.]" but rather, is inspired by a "legitimat[e] . . . concern[.] that a particular employer is undermining area standards of employment by maintaining lower standards[.]" and may therefore be understood as evidence of the union's "willing[ness] to forgo recognition." 133 NLRB at 512-513. See also, e.g., *Plumbers Local 741 (Keith Riggs Plumbing)*, 137 NLRB 1125 (1962).

⁵⁴ *Laborers Local 840 (C.A. Blinne Construction Co.)*, 135 NLRB 1153 (1962).

⁵⁵ *C.A. Blinne Construction Co.*, supra, 135 NLRB at 1168 fn. 9.

More specifically, subsection (D) describes what can be called for simplicity's sake a work-reassignment objective, but does not itself *proscribe* that objective in the normal sense of the word; that is, it does not "declare it to be unlawful" for a union merely to "want" a certain category of work to be assigned to its constituency; or to harbor or maintain as a long-term goal the securing of such work for its constituency. Rather, the *proscription* associated with the work-reassignment "object" described in subsection (D) is to be found elsewhere—in subsections (i) and (ii) of Section 8(b)(4)—which ban certain kinds of *conduct* by unions (presumed herein to include picketing and threats to picket) where "an object" of such *conduct* is to secure the reassignment of a particular increment or category of work from one group or class of workers to another.⁵⁶ Arguably, therefore, the language and structure of the statute themselves make it dubious that a union's mere abstract wish to obtain certain work for its members could suffice to establish a presumption that such a desire inspired any picketing it might conduct while simultaneously maintaining that overall goal.

I regard these preliminary reminders as having central importance to this case, because I interpret the evidence as showing, at most, that Local 290 has harbored or maintained a generalized wish to get as much scrubber-installation work (including certain magnehelics work) for its constituency as it can get. But just as it is impermissible to infer a "proscribed" recognitional or bargaining objective under Section 8(b)(4)(C) or 8(b)(7)(C) to a union's area-standards picketing in a given instance simply because unions generally exist to "organize the unorganized," and "all union activity, including picketing" may be said to be in aid of such overall goals, so, too, would it seem impermissible to infer a proscribed object in Local 290's area-standards picketing of Streimer simply because Local 290 assuredly maintains a comparable long-term goal—to get as much work, including magnehelics work, for its members as it can. Thus, I don't see Local 290's admitted "jurisdictional claims" concerning scrubber work in general, or magnehelics work in particular, as reasonably tending to prove that it had a "proscribed object" under Section 8(b)(4)(D) when it picketed Streimer. Moreover, in the light of Local 290's repeated and plain "disclaimers" of any wish to secure by its picketing a reassignment of work done by Streimer's employees to its own constituency, I find it especially unpersuasive as evidence of conduct inconsistent with its disclaimers that Local 290 has continued to "maintain" in a more general way that it views magnehelics work (and, perhaps other scrubber system work, as well) as properly within its own "jurisdiction." Indeed, in substantial agreement with Local 290's argument on brief, I fear that to ignore those disclaimers, and to presume instead from Local 290's more general jurisdictional "claims" that the picketing had a "proscribed" object, would risk flaunting the Supreme Court's admonition in *Teamsters Local 357 v. NLRB*, that the Board is not free to "assume that a union conducts its operations in violation of law[.]"⁵⁷

⁵⁶ Thus, in *Stromberg-Carlson*, supra, the Board said: "For the Board to find reasonable cause, there must be . . . (2) proscribed activity under Section 8(b)(4) (i) or (ii)[.]" 228 NLRB at 1078; my emphasis.

⁵⁷ *Teamsters Local 357 (Los Angeles-Seattle Motor Express) v. NLRB*, 365 U.S. 667, 676 (1961).

D. The Intel Events as Evidence of Proscribed Object

As I have found, Local 290's business agent, Davis, and its steward, Nelson, separately approached Fullman's superintendent, Dehaan, with complaints about Streimer's crews doing remote magnehelics installations in the planer bay of Building D-1-E. And Dehaan, himself believing that such work properly belonged to Fullman's crews, soon had no difficulty persuading the general contractor's representative, Brinster, to re-award that work to Fullman. I have already explained why I do not find such evidence remarkable in itself, except perhaps as an illustration of an uncontroverted point—Local 290 wants the magnehelics works for the workers it represents, is not shy about making that desire known, and will gladly accept the work whenever a contractor with power over the work can be persuaded to allocate it to those workers.

The General Counsel and the Charging Parties emphasize these events in their briefs, but their emphasis is somewhat inconclusive. Apparently, their supposition is that the "reassignment object" evidenced by Local 290's conduct at this time can be presumed to have informed their later picketing against Streimer, despite Local 290's affirmative disclaimers to the contrary. I have already noted that Local 290's conduct at Intel in appealing to Dehaan to get the work transferred to Fullman crews was legally privileged. Indeed, what I find more significant about the episode is that Local 290 never made any "demand or request" addressed to Streimer that Streimer "reassign" the work then in question.⁵⁸ Accordingly, Local 290's conduct at Intel cannot be equated with cases where a union's earlier demand or request that an employer reassign certain work to its own members, followed soon by picketing against the same employer that cannot be independently explained *except* in terms of the same unlawful goal, has been the rationale for finding the picketing to be unlawful.⁵⁹

Even if, contrary to the facts, we were to assume that Local 290's conduct at Intel was, for 8(b)(4)(D) purposes, tantamount to proscribed activity, such as picketing (or, alternatively, was tantamount to a "demand" that Streimer "reassign" the work), this would hardly end the inquiry in favor of the General Counsel's prosecution. For, even when a union has previously,

... picketed for an illegal objective and then [has] sought to picket for another objective, the Board has long rejected the application of a presumption of the continuity of the illegal objective *where there is no substantial independent evidence to support such a presumption*. The new picketing should be determined to be good or bad for what it is and not by reason of the object or purpose of earlier picketing. The concept of a "hiatus" is a tool in determining the objective of a union and not a rule. [Emphasis added.]⁶⁰

With respect to the "concept of a 'hiatus,'" the Board has further made it clear that even when a union has made a demand or request of an employer for a statutorily proscribed objective, and then pickets the employer *soon* thereafter for a purported area-standards purpose, "the briefness of the hiatus is in and of itself not sufficient to permit an inference that there is a continuing [proscribed] object."⁶¹

Moreover, when a *substantial hiatus* intervenes between a union's picketing for an unlawful object and its initiation of new picketing for a purported area-standards purpose, that *hiatus* itself will serve to negate any presumption that the unlawful objective of the earlier picketing "carried over to the second round."⁶² And especially where there is a substantial hiatus and the "second round" is also preceded by the union's disclaimer of any unlawful objective, and its unsuccessful attempts to get the picketed employer to respond to the union's "hard evidence that . . . the Company was paying below area standards," these combined "circumstances" clearly "militate against [finding an unlawful] object in the second round."⁶³

I have found that the *hiatus* between Local 290's conduct at Intel (itself legally harmless, and involving no "work-reassignment" claim addressed to Streimer) and its *only* episode of picketing against Streimer was a substantial one—between 45 and 75 days. As noted, the 8(b)(7) case just cited involved a "50-day hiatus." Beyond that, Local 290 clearly made good-faith efforts, well before it began picketing, to ascertain Streimer's wage and benefit levels, and Streimer repeatedly failed to respond to Local 290's inquiries even after being threatened with area-standards picketing, and subsequently canceled a meeting with Local 290 that might have resolved Local 290's complaint without the need for picketing. Thus, Streimer never undertook to test Local 290's bona fides as to the area-standards concerns it had raised.

⁵⁸ See *Stromberg-Carlson*, supra, 228 NLRB at 1078: "There is no evidence in the record that contradicts Respondent's claim that it had picketed the Employer for a week in 1976 solely for the purpose of forcing the Employer to pay [its] workers area standard wages. At no time has Respondent made any demand or request for any work assignment on behalf of its members. We will not infer such a proscribed object without more evidence."

⁵⁹ Cf., e.g., *Plumbers Local 80 (Stone & Webster Engineering)*, 267 NLRB 1325 (1982).

⁶⁰ *Philadelphia Building Trades Council (Altemose Constr.)*, 222 NLRB 1276, 1280 (1976).

⁶¹ *Electrical Workers IBEW Local 453 (Southern Sun Electric)*, 242 NLRB 1130, 1131 (1979).

⁶² *Carpenters (Ventura County) District Council (Compositor Corp.)*, 242 NLRB 1109, 1111 (1979), a case involving a "50-day hiatus." Id.

⁶³ Id.

In all the foregoing circumstances, I find no substantial evidence whatsoever that would allow the inference that Local 290's picketing of Streimer was for *any* purpose other than its declared and lawful purpose—to protest Streimer's failure to confer on its workers the area-standards wages and benefits established in Local 290's labor agreements when they performed remote magnehelics installations. All other suppositions of the prosecution are wholly speculative on this record. Indeed, the supposition that Local 290's "object" was to force *Streimer* to "reassign" the work its crews might continue to perform at *Intel*, is, in my view, the least likely of the possible scenarios suggested by the record as a whole.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶⁴

ORDER

The complaint is dismissed.

⁶⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.